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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1275 OF 2005

Sundrabai @ Champabai
w/o Appu Chougule & Anr. ...Appellants
Vs.
Babu Nagappa Chougule & Ors. ...Respondents

Mr.N.J.Patil for the Appellants
Mr.R.V.More with Ms Archana Kololgi for the Respondent No.1.

CORAM: A.S.OKA, J.
DATED: MARCH 27, 2006.

P.C.:

1. Heard Shri Patil for the Appellants and Shri More for the Respondent No.1. In a suit filed by the Respondent Nos.1 and 2, a decree for partition and separate possession has been passed. Shri Patil for the Appellants pointed out that the Appellants are claiming through one Appu. He pointed out that in the year 1962 there was a registered partition amongst the members of the joint family and there is a specific recital that except for the properties mentioned in the deed of partition, there was no other property left which was available for partition. Relying upon the recitals in the deed of partition, Shri Patil submitted that all other properties which were standing in the name of Appu will have to be treated as his self acquired properties. He relied upon the decision in a suit which related to joint family property at Miraj. By a decree passed in the said suit compensation on account of acquisition of the property was ordered to be distributed amongst the members of the joint family. He submitted that the present suit is barred by the principles of res judicata.

2. I have considered the submissions. So far as the first

submission is concerned, it must be noted here that the deed of partition relied upon by the Appellants relates to the three properties which are mentioned therein which are situated at village Kothali. The deed evidences that Appu gave up his share in the properties subject matter of the deed by accepting a sum of Rs.1500/-. The recitals in the said deed are obviously in the context of the transaction reflected in the said document. The trial court and the Appellate Court had referred to documentary evidence on record which shows that there were other properties of the joint family. The decree passed by the Trial Court has been confined to agricultural land situated at Miraj and house property at village Kothali and Miraj. The finding of the Courts below is that there was no partition as regards house property at village Kothali and agricultural land at Miraj is based on the documentary evidence on record. No interference can be made with such finding in a Second Appeal under section 100 of the Code of Civil Procedure, Code, 1908.

3. So far as the second submission is concerned, it appears that the suit referred to by the learned Advocate for the Appellant was confined to only the land which was acquired for public purpose. Surely, the decision in the said suit will not operate as res judicata in the present suit filed by the Respondent No.1 for the properties which were not subject matter of the said suit. There is no merit in the Second Appeal and the same is dismissed with no order as to costs.

Judge .